

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

V.

WARFIELD-ROHR CASKET
COMPANY, INC.

Defendant.

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) CIVIL ACTION NO. WMN-01-2872

**PLAINTIFF’S OBJECTIONS TO DEFENDANT’S PROPOSED DEPOSITION
DESIGNATIONS OF HOWARD AYRES**

Plaintiff Equal Employment Opportunity Commission objects to the following deposition designations by Defendant of Howard Ayres, on the grounds indicated thereon:

1 A. Yes.

2 Q. Anything else you tell him?

3 A. No.

4 Q. Did you have any discussions about Mr.
5 Kuehn's interaction with Mr. Eisenhart?

6 A. Uh-uh.

7 Q. How long was the conversation?

8 A. Not very long. I don't even remember.
9 I didn't really focus on it.

10 Q. Where did he call you?

11 A. At Warfield.

12 Q. He called you at your office?

13 A. Yeah.

14 Q. Did you call him back?

15 A. I truthfully don't remember. I might
16 have.

17 Q. Okay. Does Mr. Eisenhart work for you
18 in any capacity currently?

19 A. Uh-uh. Hasn't for -- since 1998.

20 Q. Okay. So to your knowledge, why did
21 Mr. Eisenhart leave?

Calls
for
hearsay

hearsay
&
lack
of
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ation

1 A. Aggravation from Mr. Kuehnl.
2 Q. Did he tell you that?
3 A. Yes, he told me that.
4 Q. When did he tell you that?
5 A. It was just common knowledge in the
6 place that it was Mr. Kuehnl's aggravation of him
7 that he couldn't stand anymore.
8 Q. So did he tell you that?
9 A. From time to time I think through the
10 years, he told me about different things he kept
11 on picking on him about.
12 Q. How long had Mr. Eisenhart worked
13 there?
14 A. Probably nine years. Somewhere in
15 that area.
16 Q. Did he ever quit?
17 A. I think maybe once before and came
18 back.
19 Q. So from time to time through the
20 years -- and that would be the nine years that he
21 worked there -- he complained about Mr. Kuehnl?

Calls
for
hearsay

hearsay

1 A. Yes.

2 Q. And did he register a complaint in
3 writing or did he talk to you verbally? How did
4 he do that?

5 A. Verbally.

6 Q. Did he do it in private?

7 A. Not very seldom.

8 Q. Was there a witness when he talked to
9 you about Mr. Kuehn?

10 A. No.

11 Q. What did he say?

objection:
hearsay

12 A. "He'd teach me to do it this way, and
13 I tried to do it, after a year or so, to do it my
14 way. And because I didn't do it his way, he
15 didn't like it." You know, the whole answer in a
16 nutshell is who cares if it you do it this way or
17 that way as long as the final result's the same?
18 If you're working a job, you find an easier way
19 to do it than the person before you and maybe
20 it's easier for them to do it this way, but maybe
21 it's easier for you to do it that way. I mean

object-
ion:
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1 it's just common knowledge. But that wasn't the
2 way it was there.

3 Q. So that's what he was telling you, is
4 that he had been taught by Mr. Kuehnl to do it
5 one way, but he had learned to do it a different
6 way?

7 A. That's one of the things.

8 Q. And so what was the nature of the
9 complaint? Was he complaining to you that he
10 wanted to do it his way or -- I mean what was he
11 complaining about?

12 A. He could never satisfy Fred.

13 Q. Is that what he said to you?

14 A. Yes.

15 Q. Anything else that you can recall?

16 A. There was just other times that -- and
17 he'd pick on him about taking time off and things
18 like that constantly. And like I say, it's been
19 a history through the last 20 years.

20 Q. So Mr. Eisenhart also complained to
21 you about Mr. Kuehnl picking on him; is that

hearsay

1 correct?

2 A. Right.

3 Q. Okay.

4 A. Along with everybody else prior to
5 him.

6 Q. So Mr. Eisenhart complained about
7 other people as well?

8 A. No. Other people have complained to
9 me in the past about Mr. Kuehnl.

10 Q. Okay. We will get to those, but right
11 now I want to limit it to what Mr. Eisenhart told
12 you and what you knew the time that he was
13 working there for the nine years.

14 When he left the first time, why did
15 he leave?

16 A. It's hard. I couldn't even remember.

17 Q. After Mr. Eisenhart complained to you
18 about Mr. Kuehnl, did you go and talk to Mr.
19 Kuehnl?

20 A. I've talked to Mr. Kuehnl from time to
21 time about how hard he was on people -- and good

irrelevant
&
hearsay

1 Q. Okay. Was Mr. Kuehnl charged with
2 making sure he did his job?

3 A. I would say yes.

4 Q. Okay.

5 A. To a degree.

6 Q. Okay. Explain that to me. What do
7 you mean "to a degree"?

8 A. Without overdoing it.

9 Q. And what do you think overdoing it was
10 with regard to Mr. Kuehnl's supervision of Mr.
11 Eisenhart?

12 A. Being too harsh with him.

13 Q. And I believe your testimony is this
14 wasn't the first time that Mr. Kuehnl had been
15 too harsh on his employees; is that correct?

16 A. That's true.

17 Q. Okay. Other than the complaints that
18 you've discussed with me regarding Mr. Eisenhart,
19 are there any other things that you recall that
20 Mr. Eisenhart complained to you about with regard
21 to Mr. Kuehnl?

lack
of
foundation

hearsay

↑
hearsay

1 A. It became a constant thing.
2 Q. That it was happening over and over
3 again?
4 A. Over and over and over again.
5 Q. Okay.
6 A. And that Fred wasn't doing his part of
7 the work, but that he was doing a lot of work for
8 him and Fred wasn't working.
9 Q. What is a rush order?
10 A. It's something probably that a funeral
11 director needs in the next hour or so, a couple
12 of hours.
13 Q. And when you say "funeral director" --
14 A. We're talking about caskets, right.
15 Q. What type of jobs would come into the
16 company that would require a rush within an hour
17 or so?
18 A. Something that was needed that day for
19 a layout maybe at 2:00.
20 Q. What's a layout? Did you say layup or
21 out?

1 out of the building.

2 Q. Okay. Did he ever have any special
3 projects other than the one that's described here
4 in other places in the building? And I'm
5 referring to Exhibit 4.

6 A. When his room wasn't busy, he'd like
7 to do other things.

8 Q. Okay. Now, I'm not talking about what
9 he liked to do, but I'm talking about what he was
10 charged with responsibility to do.

11 A. He was never charged with any of it.
12 He liked to do it.

13 Q. He liked to do it. Okay. Did you
14 ever ask him to do any special projects for your
15 personal residence?

16 A. He probably helped me once or twice
17 while I was taking chemo.

18 Q. Okay. And when was that, sir?

19 A. I took chemo from 1998 -- no, from
20 1999 to -- let me see. I think it was 1998 to
21 1999. Somewhere in that area.

irrelevant
&
highly
prejudicial

irrelevant
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prejudicial

1 Q. Did you take chemo for an entire year
2 in therapy?

3 A. I took radiation for a while then
4 chemo. I took chemo for at least seven, eight
5 months.

6 Q. And what was the treatment for?

7 A. Hodgkin's disease.

8 Q. During the seven-month period of time,
9 did you continue to work?

10 A. As much as I could. I always have.

11 Q. And how much was that? You worked as
12 much as you could. How much was that?

13 A. Pretty close to 80 percent.

14 Q. Okay. So did you go into the office
15 every day?

16 A. Every day I could.

17 Q. You didn't punch a time clock; is that
18 correct?

19 A. No.

20 Q. Who took over your responsibilities
21 when you weren't in the office?

1 do duties around the shop?

2 A. Absolutely.

3 Q. And that was never asked of him?

4 A. No.

5 Q. You never told him to do it?

6 A. He volunteered in most cases.

7 Q. Well, you weren't upset with the fact
8 that he would actually do these additional
9 chores, were you?

10 A. It's better than him sitting doing
11 nothing when there wasn't any work to be done.

12 Q. Okay. So you viewed it as better than
13 nothing; is that correct? Is that what you just
14 said?

15 A. It all depends on how you put emphasis
16 on what I just said, it's better than nothing. I
17 mean that might be slang to you. It was better
18 than him sitting there doing nothing.

19 Q. And how often did he sit there and do
20 nothing?

21 A. When it was slow, evidently, quite a

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bit.

Q. When you say "evidently," does that mean you have no personal knowledge?

A. I've seen some of it, but it's more than I could see.

Q. Okay. I need to know what you personally observed in terms of Mr. Kuehn1 sitting around and doing nothing. Not what you heard, but what you personally viewed.

A. I've seen him watch television while he was working, I've seen him put his feet up on the sewing machines, I've seen him ask for something to do.

Q. Okay. When you saw him watching TV in his work -- his work area? Is that where he was, in his work area?

A. Right.

Q. Was there a TV in any other work area?

A. No.

Q. Just the casket trimming area?

A. Right.

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1 couldn't have been there every day because you
2 were out two or three days a month, but --

3 A. I told you 80 percent of the time. I
4 tried to work as much as I could.

5 Q. Okay. And when you were in the
6 office, did you always go to the casket trim room
7 department?

8 A. Quite frequently, yes.

9 Q. And would that mean more than once a
10 day?

11 A. Possibly.

12 Q. Do you know for certain?

13 A. I'm going to go with possibly again.

14 Q. Well, I don't want you to guess, so --
15 I mean is it your testimony that you don't know
16 whether or not you were at the casket room once a
17 day? I mean it's possible? Anything's possible.

18 A. How can I remember?

19 Q. That's fine. I'm not asking you to
20 remember. If you can't remember, just say "I
21 don't remember."

1 company time or he did it on company time?

2 A. It has nothing to do with the company,
3 a lot of the things he did.

4 Q. Can you describe to me some of the
5 things he did?

6 A. He might have upholstered a chair for
7 me or whatever it might have been.

8 Q. And do you pay him apart from his
9 salary at Warfield-Rohr Caskets?

10 A. In most cases, he didn't want
11 anything.

12 Q. Okay. What about other cases? Did
13 you pay him apart from --

14 A. I don't think he ever wanted to take
15 any money.

16 Q. To your knowledge, did you ever pay
17 Mr. Kuehn1 for doing jobs in your personal
18 residence?

19 A. Not that I know of.

20 Q. None that you knew of. Did you ever
21 offer him any money?

Speculations

Speculation

1 A. I probably did.

2 Q. Do you know that you offered him
3 money?

4 A. I probably did.

5 Q. It sounds like you're guessing. I
6 want to know, you know --

7 A. I'm not guessing, and I can't go back
8 to the exact time when I did or when I didn't. I
9 don't remember.

10 Q. Okay. So you don't remember --

11 A. I don't remember.

12 Q. -- whether you paid him or not?

13 A. I don't remember.

14 Q. Okay. How often did he do these jobs
15 around your private residence?

16 A. It might go two years he didn't do
17 anything and it might go one year he'd do three
18 of them.

19 Q. Did you ask Mr. Kuehnl to keep records
20 of the work done in the casket trim room?

21 A. Absolutely not.

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AFTERNOON SESSION

(1:35 p.m.)

BY MS. ANDREW:

Q. Okay. I'm going to ask you about Exhibit Number 10 and I'm going to hand that to you and have you look at it for a few minutes, and make sure I have a copy for Mr. Hirsch somewhere in here.

A. Is it only seven on here? Oh, I see it. There's another page. Yeah. Okay.

Q. Okay. Can you identify for the record, Mr. Ayres, what Exhibit 10 is?

A. It's the -- a copy of the original paper that I did -- let Mr. Kuehnl go with. Terminated Mr. Kuehnl with.

Q. Okay. So it's a copy of the original notes that you took when you let Mr. Kuehnl go; is that correct?

A. It's a copy of the notes I prepared prior to meeting with Mr. Kuehnl and I used in presentation when I terminated him.

irrelevant

1 Q. Okay. I don't know if this is a
2 problem with the copying of the original, but I'd
3 like you to look at the margin on the left-hand
4 side. There's some writing that I can't read
5 there and I wonder if you remember what was on
6 the original or --

7 MR. HIRSCH: We brought the original.

8 MS. ANDREW: Okay. Since we're going
9 to be testifying about what is in the margin, is
10 it all there? Because I think what happened is
11 we've got this part cut off.

12 MR. HIRSCH: It is.

13 A. I don't even know what it is, to tell
14 you the truth.

15 MR. HIRSCH: I think it's all there.

16 Q. Okay. Well, I'll ask you a question
17 about what it is, then I guess what we'll do at
18 the end of the deposition -- you won't have to
19 stop, like, now -- is I'll copy it so we can make
20 a complete record, because I'll be asking you
21 about what's in the margin.

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1 So from what you can see in the
2 margin, there's a word that's underlined. Is
3 that word "never"?

4 A. Yes.

5 Q. And that's in your handwriting?

6 A. Yes.

7 Q. What are all those marks underneath
8 it?

9 A. I have no idea.

10 Q. And then there's a number that looks
11 like the number 23; is that correct?

12 A. Yeah.

13 Q. Okay. To your knowledge, do any of
14 those annotations in the margin have anything to
15 do with what is written in this note?

16 A. Right offhand, I would say no, but --
17 I don't know how it got there, to tell you the
18 truth, or whether it was there or whether I was
19 doing it when I was talking to him or not. I
20 don't know.

21 Q. Now, you said you prepared these notes

irrelevant

1 prior to talking with Mr. Kuehn1. Where were you
2 when you prepared them?

3 A. In my office.

4 Q. Were you alone?

5 A. Yeah.

6 Q. And the reason you prepared them is
7 because why?

8 A. Because I was going to terminate Mr.
9 Kuehn1.

10 Q. Okay. Had you ever terminated anyone
11 before at the company?

12 A. One other person.

13 Q. Did you prepare notes like this before
14 you terminated that person?

15 A. Probably.

16 Q. Who was that person?

17 A. Charles Feete.

18 Q. Okay. I think you testified earlier
19 that you had a salesman leave. Was that a
20 termination or was that a --

21 A. Yes.

1 A. My brother-in-law.

2 Q. Your brother-in-law. Okay. So it's
3 your wife's -- related to your wife?

4 A. Wife's brother.

5 Q. Okay. In what capacity did he work at
6 the company?

7 A. He was a bookkeeper at the time.

8 Q. Did you have to terminate him?

9 A. Yes.

10 Q. And what was the reason for
11 terminating him?

12 A. We just couldn't work together. It's
13 a personal thing between us.

14 Q. Did he have any ownership in the
15 company?

16 A. He might have had a little bit at the
17 time. I'm not absolutely positive. I think he
18 did have some. And at that time, I think we both
19 had a very small amount.

20 Q. So this is your notes of what you
21 created prior to talking to Mr. Kuehnl. Did

irrelevant
+
hearsay

1 you -- why did you prepare these notes? I mean
2 were you -- just tell me why.

3 A. Because I wanted to include everything
4 that I had to say to him and make sure I said
5 them accurately to him.

6 Q. Okay. And how many days -- or let me
7 ask it this way. How soon before the actual date
8 that you told him you were going to terminate him
9 had you prepared these notes?

10 A. Probably just a couple of days.

11 Q. Did you discuss it with anyone prior
12 to actually terminating Mr. Kuehn?

13 A. Probably the morning of.

14 Q. Who did you discuss it with?

15 A. Probably Mike Osmeyer and John
16 Rosenberger.

17 Q. Are you certain of that?

18 A. The morning of probably, yes.

19 Q. You're actually certain that you
20 talked to them the morning of the termination?

21 A. Right.

1 that's all that they had to say, is that they
2 wanted to keep him?

3 A. I wanted to keep them out of the
4 relationship with Fred. I wanted to keep them
5 out of the deal. It was my deal, not their deal.

6 Q. Okay. So that's an additional thing
7 you said to them, that you wanted them to stay
8 out of this because this was your decision? Is
9 that basically what you were saying to them?

10 A. Right. That's what it says.

11 Q. Okay. So other than them saying that
12 they didn't want to terminate him, did you recall
13 anything else they may have said?

14 A. No.

15 Q. So they -- so, basically, would it be
16 true to say you did not consult anybody other
17 than John and Mike and your wife regarding
18 terminating Mr. Kuehn1; is that correct?

19 A. Basically, that was the decision.

20 MR. HIRSCH: What do you mean by
21 "consult"? He said he talked to them. Consult

Colloquy

Colloquy

1 can be -- have a different meaning, and I just
2 want to make sure that everybody's on the same
3 page.

4 MS. ANDREW: Yeah, I understand.

5 Q. I did ask you if you had talked to
6 anybody and you mentioned Mike and John and
7 perhaps your wife. Anybody else that you can
8 remember that you talked to regarding the
9 decision of whether or not to terminate Mr.
10 Kuehn?

11 A. Not that I know of.

12 Q. Did you talk to an attorney? And I
13 want to --

14 A. No.

15 Q. Okay. Well, let's go over what you
16 wrote down. The first thing that you wrote down
17 was "I have to let you go. Terminate." This is
18 your handwriting, right?

19 A. It's my handwriting.

20 Q. "Can't afford you"?

21 A. Right.

Irrelevant
&
hearsay

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Hearsay

1 Q. What did you mean when you wrote that
2 down, "can't afford you"?

3 A. We had had some off years with the
4 company because of loss of business. And after
5 consulting with an accountant at year-end of
6 2000 -- 1999 was not a good year for us and it
7 didn't look like 2000 was going to be any better.
8 And the accountant suggested that we had to take
9 our overhead down some, so I looked for the fat
10 in the company.

11 Q. What was the name of the accountant?

12 A. Carl Silex.

13 Q. How do you spell that?

14 A. S-I-L-E-X.

15 Q. Now, did he suggest ways to cut the
16 overhead?

17 A. He just said we should do something
18 with our overhead. It was getting out of line
19 for the decrease in the business we've had.

20 Q. Now, what about the decrease in
21 business? What was the cause of the loss of

1 of a sudden?

2 A. It came on just like that. People
3 that got out of the business, you wouldn't
4 believe it.

5 Q. So has your business recovered from
6 that?

7 A. We've not totally recovered, but we
8 are recovering.

9 Q. Okay. One of the things I wanted
10 to -- I'm going to be looking at the income
11 statements soon and I wanted to ask you before we
12 start getting into this, the income statement
13 that you've given me, is that I notice that it
14 says "Warfield-Rohr Casket Company Baltimore,
15 Maryland," and you have three other locations?

16 A. That's probably the whole works
17 because we're -- the headquarters is Baltimore.

18 Q. Okay. And it's done on a consolidated
19 sheet, correct? I mean all of the businesses --

20 A. Yes, yes.

21 Q. Okay. All right. Well, let's

Calls
for
hearsay

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hearsay
&
irrelevant

1 continue looking at the exhibit that you have in
2 front of you. It's Exhibit 10, I believe?

3 A. Yes.

4 Q. Okay. So you described why you can't
5 afford him. Had you considered alternate ways of
6 cutting your overhead?

7 A. Yes.

8 Q. And what were those ways?

9 A. A lot of it I took away from myself
10 because the bottom line had changed.

11 Q. Okay. How much had you been paid
12 prior to the business loss? What did you pay
13 yourself prior to the business loss?

14 A. I paid myself a salary of -- I don't
15 even know right offhand. I couldn't tell you.
16 I'm not prepared.

17 Q. Well, if I show you some records,
18 would you verify it?

19 A. The records are the records.

20 Q. Okay.

21 A. Do you want me to say yes?

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1 replaced them.

2 Q. So you just kept your trucks -- the
3 trucks that you used to drive the caskets around
4 longer, right?

5 A. If a truck had blown an engine or
6 something was wrong with the truck, we didn't
7 replace it.

8 Q. Okay. So it's a couple or more
9 than -- is it two trucks or more? Do you think
10 it would have been more that you wanted to
11 replace that you didn't?

12 A. I really don't know. I'm estimating
13 two.

14 Q. Well, how many trucks do you have
15 total?

16 A. Probably -- I really don't know. I'm
17 going to say 11, 12.

18 Q. So in 1999 or thereabouts, you would
19 have bought a couple of more trucks had it not
20 been for this downturn in business, correct?

21 A. I would have replaced them probably,

Speculation

Speculation

1 A. Estimate, six years.

2 Q. And how long had he performed poorly?

3 A. Six years.

4 Q. And who was his boss?

5 A. Myself and John Rosenberger.

6 Q. Okay. What part of his performance
7 was poor?

8 A. Not getting enough business, sales.

9 Q. Okay. Would that be reflected in how
10 much commission he drew?

11 A. No commission; salary. Because I
12 started him out in a territory and he never grew
13 the territory.

14 Q. And what territory did you grow him
15 in?

16 A. Virginia, Virginia Beach, Newport
17 News, Portsmouth.

18 Q. Okay. Looking back at Exhibit Number
19 10, Number 3 is where we are now. It says "I
20 advised you" -- is that what those words are? "I
21 advised you"?

hearsay
&
irrelevant

1 A. That's what it says.

2 Q. -- "two years ago when we hired Matt

3 that you and Liz could run room by yourself." Is

4 that what that says?

5 A. That's exactly what it says.

6 Q. It might be better if you read it

7 because it's your handwriting, but -- I'll go

8 ahead and read it.

9 A. Do you want me to read it?

10 Q. If I read a word that's not right, let

11 me know.

12 A. I'll read it. Do you want me to read

13 it?

14 Q. Okay. What's in the big

15 parenthetical?

16 A. The big what?

17 MR. HIRSCH: The parentheses.

18 A. Oh. That's why she's backing off.

19 She don't want to say it.

20 "You passed remarks like 'What does he

21 want me to do? Shove a broomstick while I'm

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Double
hearsay

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working and sweep the floor?'"

Q. Okay. So --

A. Well, do you want to know where he wanted me to stick the broomstick?

Q. No. But this is a remark you made a note of because --

A. That's what he passed the remark to.

Q. At what time? Is this something he --

A. At the time of the discussion over whether we should hire another trimmer or he should do the job.

Q. Okay. And do you recall when that discussion took place?

A. With him when he said that?

Q. Yes.

A. It never happened to me. It happened to Mike Osmeyer.

Q. Okay.

A. And in his anger over what I expected him to do.

Q. So Mike Osmeyer's having a

1 conversation with him about what you expect him
2 to do and he says this to Mike?

3 A. Yes.

4 Q. Is that what happened?

5 A. Yes.

6 Q. So when you were sitting down with Mr.
7 Kuehn1 and you're going over these points -- and
8 I'm calling them points. That's my word. And if
9 that's wrong, let me know -- are these your
10 talking points, so to speak?

11 A. Yes.

12 Q. Did you actually confront him with
13 having said this remark?

14 A. Yes.

15 Q. What was his response to you?

16 A. He never replied one way or the other.
17 He never denied it.

18 Q. Okay. With regard to hiring Matt
19 Moore, how was it that that came about? I think
20 you testified that basically, when you hired him,
21 it was your belief, at least as reflected in

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hearsay

double
hearsay

1 Q. Okay.

2 A. It'd be up to him to answer.

3 Q. And the No. 4 on the Exhibit 10, it
4 says "This is strictly a business decision. It
5 is not personal."

6 A. What is --

7 Q. "Personnel" is what you wrote, I
8 think.

9 A. I don't know how to spell. Spell it
10 right.

11 Q. That's okay. What's that about? Why
12 did you write that?

13 A. It was a business decision. There
14 wasn't anything personal between me and him. You
15 just told me the relationship went back a lot of
16 time.

17 Q. So you liked him as a person, correct?

18 A. At times.

19 Q. Okay. At this particular time, did
20 you like him as a person?

21 A. Probably.

1 Q. You don't remember? Okay. That's
2 fine. So to your recollection, were you angry

3 At Mr. Kuehn1 during this time that
4 you decided that he had to go? Did you have a
5 problem with him? I guess I've asked you two
6 questions, so let me stick with the first
7 question. Were you angry at him?

8 A. I can't say I was.

9 Q. Did something happen that sort of blew
10 up that said "That's it, I've got to get rid of
11 him," that made you decide that this is the time
12 he had to go?

13 A. Yeah.

14 Q. What happened?

15 A. The same petty bickering that happened
16 with Mike Eisenhart was happening again with Matt
17 Moore, and this time not only Matt Moore. It was
18 Elizabeth. Both of them.

19 Q. Okay. Had Liz ever complained before?

20 A. Not much until about a year before
21 then.

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lack
of
foundation
&
hearsay

hearsay

1 Q. A year before the time you decided he
2 had to go?

3 A. Yeah.

4 Q. Okay. What did she complain about?

5 A. His work ethics, how he wasn't working
6 and they were working.

7 Q. And did she complain to you directly?

8 A. Yes.

9 Q. And what did you say to her?

10 A. "He's in charge of the room."

11 Q. Okay. And did she say anything else?

12 A. Both of them kept on complaining more
13 and more about him not working; letting them work
14 and him not working.

15 Q. Okay. Well, let's look at No. 5. I'm
16 almost through the first page. This says "With
17 the little bit of work in the room only comes to
18 1.6 caskets a day." Now, why did you write that?

19 A. Because that's all he was producing.
20 That's all they were -- all three of them were
21 producing.

1 MR. HIRSCH: She's asking why you
2 wrote the note.

3 Q. Yeah. Did you do it --

4 A. This note here?

5 Q. Yeah.

6 MR. HIRSCH: Why you wrote the note.

7 A. To tell him what the room was
8 producing.

9 Q. Okay. And then Number 6 is "I told
10 you then and I'm telling you now it is only a
11 two-man operation." What was the purpose of
12 writing that down?

13 A. Because that's all it is, a two-man
14 operation.

15 Q. And Number 7, it says "John and Mike
16 have nothing to do with it. They want to keep
17 you."

18 MR. HIRSCH: "With this."

19 MS. ANDREW: "With this." I'm sorry.

20 Q. We talked about this earlier. "They
21 want to keep you. Can't afford you."

Calls
for
hearsay

1 A. I don't remember.

2 Q. Did they have any concerns?

3 A. I don't remember.

4 Q. But no matter what concerns they had,
5 would it be fair to say that you weren't going to
6 be persuaded by them?

7 A. No, I wasn't going to be persuaded.

8 Q. You'd already made up your mind,
9 correct?

10 A. I'd made up my mind.

11 Q. Okay. And then the last page of this
12 Exhibit Number 10, there's a notation that starts
13 with May 5th at the top. Do you see that?

14 A. Right.

15 MR. HIRSCH: He's got it.

16 Q. Okay. It says "We will carry Blue
17 Cross/Blue Shield until then." So basically,
18 what you're doing, it looks like -- tell me the
19 purpose of writing that down.

20 A. I paid him those weeks.

21 Q. You paid him all the way through June

calls for
hearsay

1 did you get the numbers 76 and 84 and 56?

2 A. I probably estimated, I think, off of
3 year-end documents off the pension plan.

4 Q. Did you talk to anybody who managed
5 the pension plan?

6 A. No, because it wasn't significant
7 really because he couldn't be paid until now.

8 Q. So how did you estimate it? You just
9 looked at the year-end plan?

10 A. Probably.

11 Q. And then it says at the end "You will
12 have to make an appointment to get your stuff out
13 of here" with an exclamation mark. Is that an
14 exclamation mark at the end of that word?

15 A. Yes.

16 Q. What was the purpose of putting the
17 exclamation mark?

18 A. I have no idea.

19 Q. And why were you telling him that he
20 had to make an appointment to get his stuff out?

21 A. Because he had a lot of stuff to get

hearsay

1 Q. Well, we're still talking about
2 Exhibit Number 10. Mr. Kuehn1 says that you told
3 him at the time that you fired him that he was
4 too old, made too much money, and that he had to
5 get the fuck out. What do you say to that? Did
6 you say that to him?

7 A. At this time?

8 Q. When you fired him, the day that you
9 fired him.

10 A. I doubt it very much. I did not.
11 There's what it is right there.

12 Q. So you didn't say a word outside of
13 what's on these -- this exhibit; is that correct?
14 If it's not on here, you didn't say it?

15 A. I didn't say that just a little while
16 ago. I just said a little while ago I might
17 have.

Colloquy [18 MR. HIRSCH: You might have said --
19 Howard, you need to be very clear what you're
20 talking about. You said you might have what?
21 Said things that weren't on the paper?

Colloquy

1 THE WITNESS: I testified to it a
2 little while ago.

3 MR. HIRSCH: I know. And you need to
4 make it very clear right now what you're talking
5 about. You need to say it again. Don't assume
6 somebody --

7 THE WITNESS: I want to know how I
8 said it the first time.

9 MR. HIRSCH: Then say it again.

10 BY MS. ANDREW:

11 Q. I apologize if I'm trying to -- or if
12 you feel like I'm trying to trick you, but these
13 were talking points and so I do understand that
14 you said you said other things. So when I asked
15 you if you said what Mr. Kuehn1 said you said,
16 you said, "I don't doubt -- I doubt it. I don't
17 think I did. What I said is on this paper."

18 A. So you're saying I --

19 MR. HIRSCH: Let's start over. I
20 think the witness is confused. Why don't you
21 just reask the question again.

1 treated my employees was not the way I would have
2 treated them, and I had already made the decision
3 it was too late to even consider. Plus both of
4 the people in the room told me if he stayed, that
5 they were going to leave. They couldn't stand it
6 anymore.

7 Q. Okay. So your answer to his question
8 as to whether he could take a pay cut and stay
9 was no?

10 A. Yes.

11 Q. So you did say no?

12 A. Yes.

13 Q. Did you even consider it a second?

14 A. No.

15 Q. Had you ever considered it before?

16 A. No.

17 Q. Why not?

18 A. I don't do that to people.

19 Q. You don't cut their pay?

20 A. No.

21 Q. You cut your own pay.

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1 thought that's what the significance is, but now
2 you're telling me that the additional
3 significance could be or is that those are the
4 weeks you would pay him severance pay, correct?
5 Or you can say you don't know. I mean I'm just
6 asking you.

7 A. I don't understand what you're saying.
8 I think it's clear as can be right in front of
9 your face that that's the dates I told him.

10 Q. Okay. So I'm looking at Page 3 of
11 your notes and you're saying these are the weeks
12 you told him what?

13 A. That I was going to pay him severance
14 pay.

15 Q. It doesn't say "severance pay"
16 anywhere on this page, does it? But if you have
17 a recollection that's what you meant when you
18 wrote down those weeks, then that's your
19 testimony.

20 A. That's my testimony.

21 Q. Okay. All right. And is it true that

hearsay

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Respectfully submitted,

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